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Lim Beng Chye & Anor v Profit Term Sdn Bhd

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HIGH COURT (LIMBANG) — ORIGINATING SUMMONS NO LMN-24–1/1 OF 2016
ALWI ABDUL WAHAB JC
22 SEPTEMBER 2016

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Land Law — Caveats — Removal of — Defendant entered caveat on plaintiff's land — Plaintiff sought removal of caveat — Whether defendant have caveatable interest on land — Whether defendant could rely on cl 14 of the development agreement to claim for interest

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Both the plaintiff and the defendant had entered into a development agreement dated 10 November 2008 ('the development agreement'), where the defendant was appointed as the attorney to represent the plaintiff to carry out the needful with regards to the land. Due to the failure of the defendant in developing the land within the stipulated time, the plaintiff terminated the development agreement, and both parties proceeded with the execution of revocation of power of attorney and the deed of revocation. Despite the execution, the defendant had proceeded to lodge caveat over the land and submitted its claim to the Land and Survey Department, where they awarded the sum for compensation of the land but no specific recipient stated in the award. Consequently, the plaintiff filed the present action and sought for court order that caveat entered by the defendant be forthwith removed from land register of the Registrar of Land and Survey Department Limbang, Sarawak. The plaintiff submitted that the defendant had no caveatable interest over the land for reason that both development agreement and power attorney had been revoked by the deed of revocation and revocation of power of attorney both executed on 22 July 2015. The plaintiff also submitted that the defendant had not satisfied the court that its claim to have beneficial interest in the land raised a serious question to be tried. Further, the plaintiff contended that the defendant had also failed to show that the balance of convenience lay in its favour of the caveat remaining on the register. On the other hand, the defendant submitted that they had to lodge the caveat so that it could be updated on the progress and outcome of its claim with the Land and Survey Department Limbang.

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Held, allowing the plaintiff's application with costs of RM3,000:

(1) The reasons advanced by the defendant that the caveat had to be lodged so that it could be updated on the progress and outcome of its claim with Land and Survey Department did not amount to caveatable interest. This

was because the defendant had actually been informed on its claim by the State of Sarawak Government by way of notice under s 49 of the Sarawak Land Code prior to the lodgement of the caveat. It was also because the defendant's claim was not made against the plaintiff but in respect of the amount of the compensation due from the Land and Survey Department (see paras 20–21).

(2) The defendant failed to prove the balance of convenience lay in its favour that caveat ought to stay and for the status quo to be maintained when the defendant did not file any claim against the plaintiffs (see para 24).

(3) The defendant could not rely on cl 14 of the development agreement to claim for any interest over the land for the reason the said agreement was mutually revoked (see para 25).

[Bahasa Malaysia summary

Kedua-dua plaintif dan defendan telah memasuki perjanjian pembangunan bertarikh 10 November 2008 ('perjanjian pembangunan'), di mana defendan dilantik sebagai peguam untuk mewakili plaintif menjalankan apa-apa yang perlu berkaitan dengan tanah tersebut. Akibat kegagalan defendan membangunkan tanah tersebut dalam masa yang ditetapkan, plaintif menamatkan perjanjian pembangunan, dan kedua-dua pihak meneruskan dengan pelaksanaan pembatalan surat kuasa wakil dan surat ikatan pembatalan. Walaupun pelaksanaan tersebut, defendan telah meneruskan untuk memasukkan kaveat ke atas tanah tersebut dan menyerahkan tuntutannya kepada Jabatan Tanah dan Ukur, di mana mereka diawardkan sejumlah wang bagi pampasan terhadap tanah tersebut tetapi tiada penerima spesifik dinyatakan dalam award tersebut. Akhirnya, plaintif memfailkan tindakan ini dan memohon perintah mahkamah bahawa kaveat yang dimasuki oleh defendan dengan serta-merta dipotong daripada pendaftaran tanah Jabatan Pendaftar Tanah dan Ukur Limbang, Sarawak. Plaintif berhujah bahawa defendan tidak mempunyai kepentingan yang boleh dikaveat ke atas tanah tersebut bagi alasan bahawa kedua-dua perjanjian pembangunan dan surat kuasa wakil telah dibatalkan oleh surat ikatan pembatalan dan pembatalan surat kuasa wakil kedua-duanya dilaksanakan pada 22 Julai 2015. Plaintif juga berhujah bahawa defendan tidak memuaskan mahkamah bahawa tuntutannya mempunyai kepentingan benefisial dalam tanah tersebut membangkitkan soalan serius untuk dibicarakan. Selanjutnya, plaintif berhujah bahawa defendan juga gagal untuk menunjukkan bahawa imbangan kesenangan memihak kepadanya terhadap kaveat yang tinggal atas pendaftaran. Sebaliknya, defendan berhujah bahawa mereka terpaksa memasukkan kaveat tersebut dengan itu ia dapat dikemaskini atas kemajuan dan keputusan tuntutannya dengan Jabatan Tanah dan Ukur Limbang.

Diputuskan, membenarkan permohonan plaintif dengan kos sebanyak RM3,000:

(1) Alasan yang dikemukakan oleh defendan bahawa kaveat terpaksa dimasukkan untuk ia dikemaskinikan atas kemajuan dan keputusan tuntutannya terhadap Jabatan Tanah dan Ukur tidak merupakan kepentingan yang boleh dikaveatkan. Ini adalah kerana defendan sebenarnya telah diberitahu mengenai tuntutannya oleh Kerajaan Negeri Sarawak melalui notis di bawah s 49 Kanun Tanah Sarawak sebelum kemasukan kaveat tersebut. Ia juga adalah sebab tuntutan defendan tidak dibuat terhadap plaintif tetapi berkenaan jumlah pampasan yang patut dibayar oleh Jabatan Tanah dan Ukur (lihat perenggan 20–21).

(2) Defendan gagal untuk membuktikan imbangan kesenangan memihak kepada pihaknya bahawa kaveat patut kekal dan untuk status quo dikekalkan apabila defendan tidak memfailkan apa-apa tuntutan terhadap plaintif-plaintif (lihat perenggan 24).

(3) Defendan tidak dapat bergantung ke atas klausa 14 perjanjian pembangunan untuk menuntut bagi apa-apa kepentingan ke atas tanah tersebut disebabkan perjanjian tersebut dibatalkan secara bersama (lihat perenggan 25).]

Notes

For cases on removal of caveats, see 8(2) *Mallal's Digest* (5th Ed, 2015) paras 2711–2720.

Cases referred to

Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212, PC (refd)
Omar bin Mat Ziki v Mokhtar bin Amin [1996] 2 MLJ 687, HC (refd)
Trans-Summit Sdn Bhd v Chun Nyook Lin [1995] 3 MLJ 247, CA (refd)

Legislation referred to

Land Code (Cap 81) ss 48, 49, Form O

Shermen Then (Loke King Goh & Partners) for the plaintiffs.
Affzuandy bin Musib (Daud Ismail & Co) for the defendant.

Alwi Abdul Wahab JC:

INTRODUCTION

[1] This is the plaintiffs' originating summons dated 26 January 2016 to seek for court's order that the caveat entered by the defendant at the Limbang Land Registry Office on 2 October 2015 vide instrument No L 1825/2015 affecting all that parcel of land situated at Tanjong Timbaran, Limbang containing an area of 9,591 sqmt, more or less and described as Limbang Occupation Ticket No 1674 ('the land') be forthwith removed from land register of the Registrar of Land and Survey Department, Limbang, Sarawak.

[2] The plaintiffs, at all material times, are registered proprietors of the land.

[3] The defendant, a company, is, at all material times, a developer and a contractor.

THE UNDISPUTED FACTS

[4] The plaintiffs and the defendant had entered into a development agreement on 10 November 2008 whereby the plaintiffs granted the defendant the sole right to develop the land within the stipulated period of time.

[5] Pursuant to the development agreement the defendant was appointed as the attorney to represent the plaintiffs to carry out the needful with regard to the land. The power of attorney was registered as instrument No L183/2009.

[6] Due to the inaction of the defendant in developing the land within the stipulated time under the development agreement, the plaintiffs sent a letter of demand to the defendant on 25 June 2014 with the intention to take back the possession of the land and to terminate the development agreement.

[7] Both the plaintiffs and the defendant proceeded with the execution of revocation of power of attorney and the deed of revocation in the defendant's advocate's office of Messrs Tiong & Co on 22 July 2015 (exh TML9 annexed to the plaintiffs' affidavit in support (encl 2)).

[8] Clause 1 of the deed of revocation states that upon the execution of the deed of revocation, the parties agreed by mutual consent that the development agreement shall be deemed and treated as automatically revoked, repudiated, cancelled as well as null and void.

[9] Clause 2 of the deed of revocation also provides that neither parties shall be entitled to make any claim against each other emanating from the development agreement.

[10] Clause 3 of the deed of revocation further provides that the power of attorney vide instrument No L183/2009 shall be revoked.

[11] Despite the execution of revocation of power of attorney and the deed of revocation, the defendant proceeded to lodge the caveat over the land on 2 October 2015.

[12] By the Land and Survey Department's letter dated 16 June 2015 the parties were informed that the state intends to take possession of the land under s 48 of the Sarawak Land Code. Parties were invited to submit their claim for compensation as a result of the said compulsory land acquisition. The defendant then submitted its claim to the land and survey vide its letter dated 22 August 2015 which was received by the Land and Survey Limbang on the 9 September 2015. By its Award No 402/2015, the land and survey had awarded the sum amounting to RM208,170 for the compensation of the land but there is no specific recipient stated in the award although the names of both the plaintiffs and the defendant are mentioned in the award (exh TML11 annexed to the plaintiffs' affidavit in reply (encl 8)).

THE PLAINTIFFS' SUBMISSION

[13] Mr Sherman, learned counsel for the plaintiffs submitted that the defendant had no caveatable interest over the land for the reason that both the development agreement and the power of attorney had been revoked by the deed of revocation and revocation of power of attorney both executed on 22 July 2015. There is, therefore, no basis for the lodgement of the caveat on 2 October 2015 by the defendant as the right and interest of the defendant over the development agreement and the power of attorney had been extinguished.

[14] It was also the plaintiffs' submission that the defendant could not claim that it had caveatable interest over the land as it only interested to obtain monetary compensation, not from the plaintiffs, but from the State of Sarawak Government (*Trans-Summit Sdn Bhd v Chun Nyook Lin* [1995] 3 MLJ 247).

[15] The plaintiffs further submitted that the lodgement of the caveat supposedly by virtue of the development agreement is inconsistent with the assertions of the defendant, through the affidavits of its director, that it had no claim against the plaintiffs but it lodged the caveat to protect the defendant's interest against the Land and Survey Department regarding the compulsory acquisition of a portion of the land (paras 18 and 19 of the defendant's affidavit in opposition (encl 6)).

[16] In light of the above, the plaintiffs submitted that the defendant had not satisfied the court that its claim to have beneficial interest in the land raises a serious question to be tried. It was further submitted that the defendant had also failed to show that the balance of convenience lies in its favour of the caveat remaining on the register (*Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212).

THE DEFENDANT'S SUBMISSION

[17] Mr Affzuandy, learned counsel for the defendant referred the court to cl 14 of the development agreement (exh TML3 annexed to the plaintiffs' affidavit in support (encl 2)) where it stated that in the event of the compulsory acquisition of the land, any compensation to the land shall be made to the owner and any compensation paid for any development costs shall be given to the developer.

[18] The defendant submitted that pursuant to the above clause, its interest on the said land continues pending the outcome of its claim for compensation from the Land and Survey Department due to the compulsory acquisition under s 48 of Sarawak Land Code.

THE FINDINGS OF THE COURT

[19] It is obvious that the assertions of the defendant on the purpose of lodging the caveat through its affidavits are inconsistent with the claim by the defendant that it had caveatable interest as expressed in Form O namely under and by virtue of the development agreement and power of attorney (exh TML10 annexed to the plaintiffs' affidavit in support (encl 2)).

[20] The reason advanced by the defendant that the caveat had to be lodged so that it can be updated on the progress and outcome of its claim with the Land and Survey Department, Limbang, in my opinion, does not amount to caveatable interest. This is because the defendant can always be notified by notice on its claim by the land and survey even if there is no caveat lodged as what appeared to be the case here. The defendant had actually been informed by the State of Sarawak Government by way of notice under s 49 of the Sarawak Land Code dated 16 June 2015 prior to the lodgement of the caveat on 2 October 2015. This notice is more than sufficient for the defendant to be updated on its claim for compensation from the Land and Survey Department.

[21] As the defendant's claim is not made against the plaintiffs but in respect of the amount of the compensation due from the Land and Survey Department, there is no reason for the lodgement of the caveat over the land. The subject claim against the State of Sarawak Government can be pursued in accordance with the provision relating to compulsory acquisition procedure under the Sarawak Land Code.

[22] It is my view that the defendant's reliance on the development agreement and power of attorney as the basis for its claim of caveatable interest could not sustain as it had been extinguished by the deed of revocation and revocation of power of attorney.

[23] As far as the matters between the plaintiffs and the defendant are concerned, there seemed to be no serious issues meriting the trial as the defendant itself averred that it did not have any claim against the plaintiffs but rather a claim against the State of Sarawak Government and it went one step further to state that it honours the deed of revocation.

[24] It follows that there is nothing for the defendant to show to this court that the balance of convenience lies in its favour that caveat ought to stay and for the status quo to be maintained when the defendant did not file any claim against the plaintiffs (*Omar bin Mat Ziki v Mokhtar bin Amin* [1996] 2 MLJ 687).

[25] Finally, it is my view that the defendant could not rely on cl 14 of the development agreement to claim for any interest over the land for the reason that the said agreement was mutually revoked. Even assuming as if the agreement is still valid and subsisting, cl 14 of the development agreement which requires parties to io jointly negotiate with the State of Sarawak Government with regard to the nature and extent of the compensation for the land acquisition had never taken place in the present case.

CONCLUSION

[26] For the reasons abovementioned, the plaintiffs' application to remove the caveat entered by the defendant is allowed in terms of the originating summons dated 26 January 2016. Costs of RM3,000 for the plaintiffs.

Plaintiff's application allowed with cost of RM3,000.

Reported by Mukesh Balakrishnan